

FILED

MAR 14 2013

Clerk, U.S District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DARRIN CADY,

Cause No. CV 12-00177-M-DLC

Petitioner,

v.

ORDER

ATTORNEY GENERAL OF
THE STATE OF MONTANA,

Respondent.

Petitioner Darrin William Cady filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 on October 23, 2012. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations on January 22, 2013, recommending the Petition (doc. 1) be dismissed for failure to exhaust state remedies. Judge Lynch also recommended, pursuant to 28 U.S.C. § 2253(c)(2), that a certificate of appealability is not warranted because there is no doubt about the correctness of this ruling. (Doc. 6 at 4.)

Within fourteen days of being served with findings and recommendations, a party may file written objections. 28 U.S.C. § 636(b)(1)(C). If a party fails to object to a magistrate judge's recommendations, he waives all objections to the findings of fact; however, the failure to object ordinarily does not waive objections to purely legal conclusions. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998).

No party filed objections to the January 22, 2013 Findings and Recommendations, thus Judge Lynch's findings of fact are adopted by reference in this Order. His conclusions of law are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Having carefully reviewed the Findings and Recommendations, I find them well grounded in law and fact and adopt them in their entirety. Accordingly, IT IS HEREBY ORDERED:

1. Judge Lynch's Findings and Recommendations (doc. 6) are ADOPTED in full.
2. Plaintiff's Petition (doc. 1) is DISMISSED without prejudice.
3. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
4. A certificate of appealability is DENIED.

Dated this 14th day of March 2013.



Dana L. Christensen
Dana L. Christensen, District Judge
United States District Court